

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH PAUL GUARNERI,

Plaintiff,

v.

1:19-CV-0921
(GTS/ATB)

MELISSA GOODREAU, Social Worker, Schoharie Cty.
Dep't of Soc. Servs.; JULIA SAMMON, Schoharie Cty.
Dep't of Soc. Servs. Comm'n; ELSA LEABAURY,
Physician, Albany Cty. Jail; RICH PETER, Albany Cty.
Jail Inmate Serv.; MICHAEL J. LYONS, Superintendent,
Albany Cty. Jail; CRAIG D. APPLE, SR., Sheriff, Albany
Cty.; MARK GAYLORD, Schoharie Cty. Pub. Defender,
MICHAEL L. BREEN, Assistant Dist. Attorney,
Schoharie Cty.; LORA J. TRYON, Assistant Dist.
Attorney, Schoharie Cty.; and SUSAN J. MALLERY,
Dist. Attorney, Schoharie Cty.,

Defendants.

APPEARANCES:

JOSEPH PAUL GUARNERI, 14468-7665

Plaintiff, *Pro Se*

Albany County Correctional Facility
840 Albany Shaker Road
Albany, New York 12211

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Joseph Paul Guarneri (“Plaintiff”) against the ten above-captioned employees of Schoharie and Albany (“Defendants”) pursuant to 42 U.S.C. § 1983, are (1) Chief United States Magistrate Judge Andrew T. Baxter’s Report-Recommendation recommending that Plaintiff’s second motion for leave to proceed *in*

forma pauperis be denied and that his Complaint be dismissed without prejudice unless, within thirty (30) days of the issuance of a Decision and Order adopting the Report-Recommendation, Plaintiff pays the statutory filing fee of four hundred dollars (\$400.00), and (2) Plaintiff's Objection to the Report-Recommendation. (Dkt. Nos. 7, 8.)

For the sake of brevity, the Court will liberally construe Plaintiff's Objection as setting forth specific challenges to all findings and recommendations in the Report-Recommendation. Even doing so, after carefully reviewing the relevant papers herein, the Court can find no error in Chief Magistrate Judge Baxter's Report-Recommendation: Chief Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein. To those reasons, the Court would add only one point.

In his Objections, dated August 21, 2019, Plaintiff argues essentially that he is exposed to "potential danger" because (1) an official in his correctional facility's business office is refusing to certify the balance in his account at the facility, (2) he has received "repeated threat[s] [of] physical beat[ings]" at the facility, (3) he recently received a "coronary angiograph" and four stents, and (4) he is a diabetic. (Dkt. No. 8.) In addition, Plaintiff argues that there is a nexus between this potential danger and his legal claims asserted in his Complaint, which regard (among other things) his allegedly deficient medical care at the facility. (*Id.*) Even if the Court were to consider such late blossoming factual allegations (which it is not inclined to do, out of respect for the judicial efficiency and the Federal Magistrates Act of 1968), the Court would find that these arguments fail to plausibly suggest that Plaintiff was in *imminent* danger of *serious* physical injury *at the time* his Complaint was dated and thus "filed" pursuant to the Prison

Mailbox Rule (i.e., July 19, 2019).

ACCORDINGLY, it is

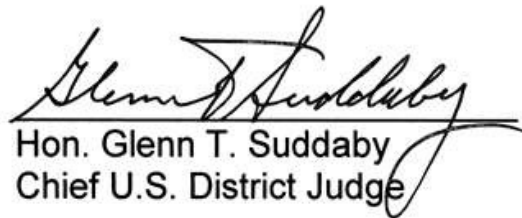
ORDERED that Chief Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 7) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's second motion for leave to proceed *in forma pauperis* (Dkt. No. 4) is **DENIED**; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) shall be **DISMISSED** without prejudice and without further Order of this Court **UNLESS, within THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff pays the Court's filing fee of four hundred dollars (\$400.00); and it is further

ORDERED that, should Plaintiff comply with this Decision and Order, the Clerk shall return the file to Chief Magistrate Judge Baxter for his review of Plaintiff's Complaint in accordance with 28 U.S.C. § 1915(A).

Dated: November 15, 2019
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge